THE

TRIAL

OF

DANIEL ISAAC EATON,

BEFORE

LLOYD LORD KENYON,

AND A SPECIAL JURY,

IN THE

COURT OF KING's BENCH,

GUILDHALL, LONDON,

JULY the TENTH, 1793;

FOR SELLING A SUPPOSED LIBEL,

A LETTER, addreſſed to the ADDRESSERS.

By THOMAS PAINE.

LONDON:
PRINTED AND PUBLISHED BY THE DEFENDANT,
ANIEL ISAAC EATON, No. 81, Bishopsgate-street;
ud Sold by H. D. Symonds, Paternoſter Row; James Ridgway, York Street, St. James's; Rio Rickman, Great Mary Le Bone Street; T. W. Hawkins, Borough; I. S. Jordan, Fleet Street; J. Gale, Sheffield; R. Phillips, Leiceſter; Benjamin Flowers, Cambridge; Meſſrs. Berry and Robinson, Edinburgh; Mash and Read, Glaſgow; and all the Bookſellers in Town and Country.

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Mr. SOLICITOR GENERAL
Mr. BEARCROFT
Mr. BALDWIN
Mr. WOOD

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Attorney.

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No. 4, Percy Street, Rathbone Place.

CITY OF LONDON,

Hilary Term 1793.

THE KING,

verſus

DANIEL ISAAC EATON.

INFORMATION.

LONDON (to wit) *Be it remembered, that* Sir ARCHIBALD MACDONALD, *Knight, Attorney General of our Sovereign Lord, the now King, who for our ſaid Lord the King, proſecutes in his behalf, in his proper perſon comes into the Court of our ſaid Lord the King, before the King himſelf, at Weſtminſter, in the County of Middleſex, on Tueſday next, after the Morrow, of the Purification of the Bleſſed Virgin Mary, in this ſame Term, and for our ſaid Lord the King, gives the Court here to underſtand, and be informed that before the publiſhing of the wicked malicious, ſcandalous, and ſeditious, Libel, herein after mentioned, (to wit) on the twenty firſt day of May, in the Year of our Lord, one thouſand ſeven hundred and ninety two, our ſaid Lord the King, by the Advice of his Privy Council, had iſſued a Proclamation, whereby after reciting that divers wicked, and ſeditious writings has been printed, publiſhed, and induſtriouſly diſperſed, tending to excite Tumult and diſorder by endeavoring to raiſe groundleſs Jealouſies*

louſies and Diſcontents, in the Minds of his faithful and loving Subjects, reſpecting the Laws, and happy Conſtitution of Government, Civil, and Religious, Eſtabliſhed in this Kingdom, and Endeavouring to viliſy and bring into Contempt the wiſe and wholeſome Proviſions, made at the time of the Glorious Revolution, and ſince ſtrengthened, and Confirmed by ſubſequent Laws, for the Preſervation and Security of the Rights, and Liberties of his faithful and loving ſubjects, and that divers Writings had alſo been printed, publiſhed, and induſtrioufly diſperſed, recommending the ſaid wicked and ſeditious Publications to the Attention of all his faithful and loving Subjects, and that he had alſo reaſon to believe that Correſpondencies had been entered into with ſundry Perſons in foreign parts with a view to forward the criminal and wicked purpoſes above-mentioned, and that the Wealth, Happineſs, and Proſperity, of this Kingdom, did under divine Providence chiefly depend upon a due Submiſſion to the Laws, a juſt confidence in the integrity and wiſdom of Parliament, and the continuance of that zealous Attachment to the Government and Conſtitution of the Kingdom, which had ever prevailed in the minds of the People thereof, and that there was nothing which he ſo earneſtly deſired as to ſecure the public peace and proſperity, and to preſerve to all his loving Subjects the full enjoyment of their Rights and Liberties, both Religious and Civil. He therefore being reſolved, as far as in him lay, to repreſs the wicked and ſeditious Practices aforeſaid, and to deter all Perſons from following ſo pernicious an Example. Solemnly warned all his loving Subjects,

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as they tender their own Happineſs and that of their Proſperity to guard againſt all ſuch attempts which aimed at the ſubverſion of all regular Government within this Kingdom. and which were inconſiſtent with the Peace, and order of Society and earneſtly exhorted them at all times and to the utmoſt of their Power to avoid and diſcourage all proceedings tending to produce Riots and Tumults and he did Strictly charge and command all his Magiſtrates in and throughout his Kingdom, of Great Britain that they ſhould make diligent Enquiry, in Order, to diſcover the Authors, and Printers, of ſuch wicked ſeditious Writings as aforeſaid, and all others who ſhould diſperſe the ſame, and he did further charge and command all his Sheriffs, Juſtices of the Peace, Chief Magiſtrates in his Cities, Boroughs, and Corporations, and all others, his Officers and Magiſtrates throughout his Kingdom of Great Britain that they ſhould in their ſeveral and reſpective Stations take the more immediate and effectual care to ſuppreſs and prevent all Riots Tumults and other Diſorders which might be attempted to be raised or made by any Perſon or Perſons, which on whatever pretext they might be grounded were not only contrary to Law, but dangerous to the moſt Important Intereſts of this Kingdom, and he did further require, and command all and every his Magiſtrates aforeſaid, that they ſhould, from time to time, tranſmit to one of his Majeſty's principal Secretaries of State due and full Infomation of ſuch Perſons, as ſhould be found offending aforeſaid or in any degree aiding or abetting therein, it being his Determination for the Preſerva-

tion of the peace and happineſs of his faithful and loving ſubjects, to carry the Laws vigorouſly into Execution againſt ſuch offenders as aforeſaid, (to wit.) at London in the Pariſh of Saint Mary le-Bow in the ward of Cheap. And the ſaid Attorney General who proſecutes as aforeſaid, further gives the Court here to underſtand, and be informed, that after the ſaid Proclamation had been iſſued, and before the Publiſhing of the wicked, Malicious, ſcandalous and ſeditious, Libel, hereinafter next mentioned, divers addreſſes on occaſion of ſuch Proclamation has been announced, in the London Gazette, as having been made to his ſaid Majeſty and the Government, and Conſtitution of this Kingdom, (to wit.) at London aforeſad, in the Pariſh and Ward aforeſaid. And the ſaid Attorney General who proſecutes as aforeſaid. gives the Court to underſtand and be informed, That DANIEL ISAAC EATON, *late of London, Bookſeller, well knowing the Premiſes, but being a wicked, malicious, ſeditious and evil diſpoſed Perſon, and being greatly diſaffected to our ſaid Lord the King, and the Conſtitution and Government of this Kingdom, and wickedly, maliciouſly, and ſeditiouſly contriving deviſing, and intenaing to ſtir up and excite Diſcontents and Seditoins among the Subjects of our Lord the King, and to bring the ſaid Proclamation into diſregard and contempt amongſt his Subjects and to alieniate and withdraw the Affection, Fidelity, and Allegiance of his ſaid Majeſty's Subjects, from his ſaid Majeſty's Perſon and Government, and wickedly, maliciously, and ſeditiously to inſinuate and cauſe it to be believed by all the Liege*

Subjects

Subjects of our ſaid Lord the King, that the Conſtitution and Government of this Kingdom as by Law eſtabliſhed, is a System of Tyranny, Injuſtice and Oppreſſion, and deſtructive of the Liberties and Happineſs of his ſaid Majeſty's Subjects, and thereby to ſtir up and excite his ſaid Majeſty's Subjects to ſeditious Meetings and Conventions, and wickedly and ſeditiously to diſturb and deſtroy the peace, good order, and tranquillity of this Kingdom, on the firſt Day of February, in the thirty-third Year of the Reign of our Lord, the now King, with force and Arms at the Pariſh aforeſaid, in the Ward aforeſaid, in London aforeſaid, unlawfully, wickedly, maliciously and ſeditiously did Publiſh, and cauſe and procure to be publiſhed, a a certain wicked, malicious, ſcandalous and ſeditious Libel, intitled a Letter addreſſed to the Addreſſers on the late Proclamation (meaning his ſaid Majeſty's Proclamation) in which ſaid Libel are contained, (amongſt other things,) divers malicious, ſcandalous and ſeditious Matters, of and concerning the Conſtitution of this Kingdom, according to the tenor following. (that is to ſay.)

Page 26. "*It is a good Conſtitution, (meaning the Conſti-*
"*tution of this Kingdom,) for Courtiers, Placemen,*
"*Penſioners, Borough-holders, and the leaders of*
"*Parties, and theſe are the Men, that have been,*
"*the Active Leaders, of Addreſſes, (meaning ſuch*
"*Addreſſes as aforeſaid) but it, (meaning the Conſtitu-*
"*tion of this Kingdom,) is a bad Conſtitution for*
"*at leaſt Ninety-nine parts of the Nation, (meaning*
"*this Kingdom,) out of an Hundred, and this truth,*

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" is every Day, making it's way. It is bad, First,
" becauſe it entails upon the Nation the unneceſſary
" Expence of Supporting three forms and Syſtems,
" of Government at once, namely, the Monarchical the
" Ariſtocratical and the Democratical. Secondly becauſe
" it is Impoſſible to unite ſuch a diſcordant Compoſi-
" tion by any other Means than perpetual corruption,
" and therefore the corruption ſo loudly and ſo uni-
" verſally complained of, is no other than the natural
" conſequence of ſuch an unnatural compound of Go-
" vernments, and in this conſiſts that Excellence which
" the numerous herd of Placemen, and Penſioners ſo
" loudly extoll, and which at the ſame time occaſions
" that enormous Load of Taxes, under which the reſt
" of the nation groans. Among the maſs of national
" deluſion, calculated to amuſe and impoſe upon the
" multitude, the ſtanding one has been that of flat-
" tering them into taxes, by calling the Government
" (or as they please to expreſs it, the Engliſh Conſtitu-
" tion.) the envy and the admiration of the world,
" ſcarcely an addreſs has been voted, in which ſome
" of the Speakers have not uttered this hackneyed
" nonſenſical falſhood. Two Revolutions have taken
" place, thoſe of America and France, and both of
" them have rejected the unnatural compounded ſyſtem
" of the Engliſh Goverment. America has declared
" againſt all hereditary Government, and eſtabliſhed
" the repreſentative ſyſtem of Government only—
" France has entirely rejected the ariſtocratial part,
" and is now diſcovering the abſurdity of the mon-
" archical and is approaching faſt to the repreſenta-
" tive ſyſtem. On what ground then do thoſe men con-
" tinue a declaration reſpecting what they call the en-

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"envy and admiration of other Nations, which "the voluntary practice of such nations, as have "had the oportunity of establishing Government, con- "tradicts and falsifies. Will such men never confine "themselves to truth? will they be forever the deceiv- "of the people." And in which said Libel are contain- ed (among other things) divers other malicious, scan- dalous and seditious matters of and concerning the Constitution of this Kingdom, according to the Tenor following. (that is to say)

Page 30 "I have asserted and have shewn both in the first, "and second parts of the Rights of Man, that there "is not such a thing as an English Constitution, and "that the people (meaning the people of England,) "have yet a Constitution to form. And in which said Libel (amongst other things,) are contained, divers other malicious, scandalous, and seditious Matters, of and concerning the Constitution of this Kingdom, according to the Tenor following, (that is to say)

Page 50. "It has ever been the craft of Courtiers, for pur- "pose of keeping up an expensive and enormous civil "list, and a mummery of useless and antiquated places "and offices at the public expence, to be continually "hanging England upon some individual or other, call- "ed King, though the man might not have capacity "to be a parish constable, the folly and absurdity of "this is appearing more and more every day; and "still those men, continue to act as if no alteration "in the public opinion has taken place. They hear each "others nonsense, and suppose the whole nation talks "the same Gibberish, Let such men cry up the House "of Orange, or the House of Brunswick, if they please

They

"*they would cry up any other House if it suited their*
"*purpose and give as good reasons for it. But what*
"*is this House, or that House, or any* other *House*
"*to a Nation. For a Nation to be free, is suffici-*
"*ent that she wills it. Her freedom depends wholly*
"*upon herself and not on any House, nor on any in-*
"*dividual I ask not in what light this cargoe of fo-*
"*reign Houses appears to others, but I will say in*
"*what light it appears to me. It was like the trees*
"*of the forest saying unto the bramble, come thou*
"*and reign over us.*" *And in which said Libel,* (*amongst other things*) *are contained divers other malicious, scandalous and seditious Matters, of and concerning the constitution, and Government of this Kingdom, and the power and authority of the Parliment thereof, according to the tenor following* (*that is to say*)

Page 55. "*I consider the reform of Parliament,* (*meaning the*
"*Parliament of this Kingdom,*) *by an application to*
"*Parliament,* (*meaning the Parliament of this King-*
"*dom,*) *as proposed by this Society to be a worn-out*
"*hackneyed subject, about which the Nation is tired,*
"*and the parties are deceiving each other. It is not*
"*a subject that is cognizable before Parliament,* (*mean-*
"*ing the Kingdom,*) *because no Government has a*
"*right to alter it self either in whole or in part.*
"*The right and the exercise of that right apper-*
"*tains to the nation only. And the proper means is*
"*by a National Convention elected for the purpose*
"*by all the people. By this the will of the nation*
"*whether to reform, or not, or what the reform*
"*shall be, or how far it shall extend will be known*

and

" *and it cannot be known by any other means. Par-*
" *tial addreſſes, or ſeperate aſſociations are not tes-*
" *timonies of the general will. It is however cer-*
" *tain that the opinions of men with reſpect to ſys-*
" *tems and principles of Government are changing*
" *faſt in all Countries, the alteration in England*
" *within the ſpace of little more than a year, is far*
" *greater than could then have been beleived, and*
" *it is daily and hourly increaſing. It moves along*
" *the country with the ſilence of thought. The*
" *enormous expence of Government (meaning the Go-*
" *vernment of this Kingdom,) has provoked men*
" *to think by making them feel and the Proclamation*
" *(meaning his Majeſty's ſaid Proclamation.) has*
" *ſerved to increaſe jealouſy and diſguſt. To prevent*
" *therefore thoſe commotions which too often and too*
" *ſuddenly ariſe from ſuffocated diſcontents, It is beſt*
" *that the general will ſhould have the full and free*
" *opportunity of being publickly aſcertained and known"*
And in which Libel are contained (amongst other things,) divers other malicious ſcandalous and ſeditious matters of and Concerning the Repreſentation by the Commons of Great Britain in Parliament aſſembled and of and concerning the Power and Authority of the Parliament of this Kingdom according to the Tenor following (that is to ſay)

Page 57. " *I wiſh that* Mr. Grey *ſince he has embarked*
" *in the Buſineſs would take the whole of it into*
" *Conſideration, he will then ſee that the right of*
" *reforming the State of the Repreſentation (meaning*
" *Repreſentation by the Commons of Great Britain*
" *in Parliament aſſembled) does not reſide in Par-*
" *liament (meaning the Parliament of Great Britain)*
" *and the only Motion he could conſiſtently make,*

" would be that Parliament (meaning the Parli-
" ament of Great Britain.) ſhould recommend the
" election of a Convention by all the People, be-
" cauſe all pay Taxes, but whether Parliament,
" (meaning the Parliament of Great Britain) re-
" commended it or not, the Right of the Nation
" would neither be leſſened nor increaſed thereby."
And in which ſaid Libel (amongſt other things)
are contained divers other malicious, ſcandalous, and
ſeditious Matters according to the tenor following,
(that is to ſay.)

Page 66 " Inſtead then of referring to Rotten Boroughs,
" and abſurd Corporations (meaning Boroughs and
" Corporations of this Kingdom) for Addreſſes, or
" hawking them about the Country to be ſigned by
" a few dependant Tenants, the real and effectual
" mode would be to come at the point at once, and
" to aſcertain the ſenſe of the Nation, (meaning this
" Kingdom,) by electing a National Convention."
(meaning a Convention of the People of this King-
dom, otherwiſe than in Parliament aſſembled.)
To the great danger of our happy Conſtitution
and Government, In contempt of our ſaid Lord
the King and his Laws, to the evil example of all
others in the like caſe offending, and againſt the
Peace of our ſaid Lord the King, his Crown and
Dignity, Whereupon, the ſaid Attorney General of
our ſaid Lord the King, in this behalf, proſecuteth
for our ſaid Lord the King, prayeth the conſide-
ration of the Court here in the Premiſes, and that
due proceſs of law may be awarded againſt him
the ſaid DANIEL ISAAC EATON, in this behalf,
to make him anſwer to our ſaid Lord the King,
touching and concerning the Premiſes aforeſaid.

The Information opened by Mr. Wood.

Mr. Attorney General. May it pleaſe your Lordſhip, and Gentlemen of the Jury, I have the Honour to attend you in the diſcharge of my official duty, for the purpoſe of laying before you the grounds on which this Information is inſtituted, and the evidence by which it is ſupported. The late Attorney General, in the diſcharge of his duty, thought it incumbent upon him, from the peculiar circumſtances with which it is accompanied, to ſubmit this caſe to the deciſion of an Engliſh Jury: Gentlemen, the Defendant in this caſe is not the Author of this Work, but he is, as I ſhall be able to prove to you, moſt indiſputably the publiſher of the Work in queſtion; and the circumſtances to which it will be neceſſary your attention ſhould be directed, are the fact of the Publication, and the nature of the Work which is publiſhed.

I ſhall not on this occaſion, enter into any diſcuſſion as to what may be the particular circumſtances under which it may be proper either to Proſecute or to forbear the Proſecution againſt the Publiſher, I mean not to enter into the conſideration of the propriety of Proſecuting the Author, or of Proſecuting the Publiſher; but I ſtate it to you, under the correction of my Lord, as a rule of Law, indiſputably clear, that a man who holds out to the public, a publication of the deſcription which I impute to this work, is guilty of the offence imputed to him in the Indictment: and that man cannot ſtate himſelf to be not guilty of

Offence, ſince a publication of this kind is calculated to overturn the moſt invaluable Rights of Individuals; it can hardly be contended, that the Publiſher can be guiltleſs, or can he juſtify his conduct. In this cauſe I know not what can be ſaid for the Publiſher, who in this particular caſe is brought before you. I am ſpeaking in the preſence of thoſe who I think will agree, that what I ſtate is incapable of contradiction: that audience in whoſe preſence I am ſpeaking, know the governing principles of this Country conſtitute all that happineſs, and all that glory which belong to Engliſhmen, happy are they if they have but the good ſenſe to retain a fondneſs for thoſe privileges which ſecure to them their civil, moral, and political Liberty, and thoſe felicities, which, under the protection of providence, were never given, in ſo ample a manner to any other Country under the canopy of Heaven, or to any Nation on the face of the Earth, and I muſt profeſs, I think this aſſertion is incapable of Contradiction.

Sometime ſince we had the good ſenſe to underſtand, and know our ſuperior privileges: it was not then thought, as this Author has flippantly aſſerted, "That "it was a good Conſtitution for Courtiers, Placemen, "Penſioners, Borough-holders, and the leaders of Parties, "and theſe are the men that have been the active lea- "ders of addreſſes, but it is a bad Conſtitution for at "leaſt ninety nine parts out of an hundred, and this "Truth is every day making its way." But men of all deſcriptions, upon reaſoning in their cloſets, looking at the hiſtory and experience of Mankind, are thoroughly convinced, that, in point of fact, this Conſtitution did beſt ſecure, and does ſecure the great end of Political Go-

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vernment, Perſonal Liberty, Perſonal Security, and the ſecurity of Property: it was not as this Author has pleaſed to ſtate it, but men in every country, ſpeculating on the nature of Government in every Country, looked to Great Britain, as the moſt favoured ſpot under the canopy of Heaven.

There was a Country in Europe, which in point of fact, enjoyed the moſt mild and benignent Government in Europe, (I mean France,) but, at the ſame time, the principles upon which it was enjoyed, were not ſuch as to ſecure that enjoyment, with that ſecurity of permanency that rational men have a right to look to: whether it was thought neceſſary for the introduction here of the ſame Effects which have taken place in that Country, that this Government ſhould be reviled or not, I know not, but as you have been told by the Proclamation, which is part of the Record, in point of fact, there were, in this Country, ſeditious Writings of all Sorts, and of ſuch a nature as upon the authority of this Author I aſſert, never made their appearance in this Country before.

The ſecond part of the Rights of Man informs us, that the Author felt no difficulty to ſtate, that during the late War he formed a deſign, and he communicated it to General Greene, at Philadelphia: he was impreſſed with the idea that if he could get over to England without being known, and only remain in ſafety, till he could get a Publication out, he would open the eyes of the Country, as to the madneſs and ſtupidity of its Government. He authorizes me to ſay what I have ſtated, when he expreſſes a wiſh to know the manner in which a work

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different from what had been cuſtomary to be ſeen in England would be received, before he proceeded further.

Gentlemen of the Jury, This proof of the ſyſtematically miſchevious intentions of this Author, is confirmed by the diligence with which productions of ſuch a Nature have been diſperſed through this Country. The chief Magiſtrate of this Country (who is never once repreſented, in this publication, as the chief Magiſtrate entruſted with the powers the Conſtitution has given him for the benefit of the Country; and in the exerciſe of which he is reſtrained by the Law; his duty preſcribed by Law; and his Conduct regulated by Legal Principles.) thought it his duty to ſtate that there was a Law in England, that might be applied to thoſe who dared thus to interrupt the happineſs of the Country; to warn his Subjects, not as this Author has repreſented it, againſt a temperate and free diſcuſſion of the principles of the Conſtitution of this Country; but againſt ſeditious Writings tending to miſlead the Public—Writings publiſhed by thoſe who knew the nature of the Conſtitution of which they were treating, not to be ſuch as they repreſented it to be: Gentlemen, the ſecond part of the Rights of Man, became, after this the ſubject of a Proſecution in this Country, the reſult of the Trial of Mr. Paine was, (for after all, the Conſtitution of this Country reſts on the Protection which a Jury will give it.) the reſult of that trial was, that the Jury in this place were of opinion that it was an infamous and ſcandalous Libel, the Author of the Work was, as he ſtated he meant to be, out of the Kingdom, he came here in 1790. and publiſhed ſuch a writing as he confeſſes never before appeared in this Country, he

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remained till he could get his publication out, and then he was gone, this was on the 18th. December, 1792, His Majeſty's Proclamation ſtated in this Record, had been iſſued in May, 1792.

The Author of the Work as if his buſineſs was to revile all the authority in the Country, did not wait for the deciſion of the Jury, but employed his time in printing this Book, which now Gentlemen, is brought before you, and I take the liberty to ſtate it in your preſence, and in the preſence of the Country at large, that without exception, it is the moſt abſurd and daring Libel that ever was publiſhed. I am not afraid to ſay that it requires the exertion of great talents, to ſtate the diſtinction, if there be one, according to the laws of England, between this ſort of writing and ſuch as amounts to High Treaſon: Gentlemen, I will ſay too there is a Caſe that may happen, that a Publiſher, in the ordinary courſe of his Trade, may give a Book to a Cuſtomer: that he may give it with no motives more nor leſs, than belong to an honeſt Tradeſman, he may yet in ſo doing expoſe himſelf, if the work is dangerous, to the penalties of the Law.

It is extremely clear, that in point of Publication, the conduct of the party may be very different as to criminality, for, if the work upon the face of it, purports to be a work reflecting on the actual Government of the Country, in any particular inſtance in which it is thought proper to exerciſe the powers of Government: if it reflects on all the conſtituted powers of the Country, and upon thoſe who exerciſe thoſe Authorities, I beg leave to ſay if a Publiſher can ſuppoſe from the circumſtances of the caſe, that he does publiſh it at a riſk, and is yet reſolved to publiſh it, and does publiſh it, and continues to publiſh

it at the ſame riſk, if ſo, at his riſk be it. I ſay when this Author had been convicted upon a Verdict of the Jury of the Country, which had been found againſt him in December, 1792, it was becoming thoſe who were vending the firſt and ſecond part of the Rights of Man, to take care that they did not publiſh the third Work of this Author, if it contained matter more offenſive to law than either the firſt or ſecond parts.

The Publication in queſtion was ſold by the Defendant ſo late as the month of February laſt, now Gentlemen, under theſe circumſtances, I think I might ſubmit to any man in Court: with reſpect to the expediency of this Proſecution; but entering my ſolemn proteſt againſt the neceſſity of giving that evidence, I am prepared to prove to you that the chief Magiſtrate of this City, in obedience to the Law, and in the laudable exerciſe of his duty as ſuch, took the trouble to inform this man, and adviſe him that he was doing that which he ought not to do, for that the law, as he was adviſed, would not permit it; telling him if he choſe to act on any other advice he muſt anſwer for it, he found himſelf bound to watch his Conduct, and if he choſe to act as a good ſubject ought to do, he might protect himſelf. Gentlemen, notwithſtanding that, the Defendant ſtill perſiſted in giving this Publication to the World, and under ſuch Circumſtances, if the Publication, be, as it is ſtated, he has no reaſon to complain if the Law is applied to his individual Caſe. Now Gentlemen, with reſpect to the paper itſelf, I am very far from ſaying, that any intimation of this ſort, was an intimation, that any ſubject was bound to obey

Gen-

Gentlemen, it is fully conſiſtent with my duty, to remark to you the wiſdom, of the law of the Country: and the impropriety of departing from it, on ſpeculations, which will be found to have produced more miſery to the Public, within the laſt three Years than perhaps ever exiſted before: I ſay, the reflection that that remark, raiſes in my mind, is to render it extremely doubtful, whether in my ſituation, I ſhould not better do my duty to the Public, by following the rule of law, as I find it to be handed down to me, and, as I find it to have been received by thoſe who have adminiſtered it in paſt ages, than in ſtating to you any ſuſpicions of my own, with reſpect to what it is, or ought to be. I ſay diſtinctly, this Defendant, had a right, ſubject to this qualification, to publiſh this book, for I find the law to be ſuch, that if the liberty of the preſs is not infringed, or violated, it is eſſential to a free State. —Gentlemen, you will give me leave to obſerve, that in all States, that have not been founded on principles of liberty, in them the liberty of the Preſs does not exiſt, this liberty conſiſts in laying no reſtraints on Publications, every Freeman has an undoubted right to lay what ſentiments he pleaſes before he public, but if he publiſhes what is improper, he muſt take the conſequence of his temerity.

A man (ſays a fine writer on this ſubject) may be allowed to keep poiſons in his cloſet, but not publickly to vend them as medicines, and to this he adds, it is neceſſary to prevent improper conduct, and that to cenſure the licence is not to attack the liberty of the preſs.

Gentlemen, I ſay the defendant had a right to publiſh this book if he choſe, leaving it to you to ſay whether he had done right in publiſhing it, without attending to his duty as a publiſher: whether you find yourſelves bound to cenſure him or not with reſpect to the publication of it. Gentlemen, I am one of thoſe who admit there never has a caſe occurred, in which it was leſs neceſſary to diſpoſe of a dry queſtion of Law, whether a man might or not freely and rationally diſcourſe in public, or otherwiſe, on the principles of any Government under heaven, and I do not believe the caſe ever will occur; or that a Jury need to be aſked that queſtion: but I have no objection to ſay, that if you can take up this book, and can lay your hands upon your hearts and can ſay the Author, with the knowledge he neceſſarily muſt have of the nature of the Conſtitution of this Country, meant fairly to repreſent the Conſtitution of this Country, and to reaſon upon it, and that he meant to ſtate the principles on which the Conſtitution of other Countries were formed, and the effect of thoſe principles, as he knew them, at the time this work was publiſhed, and then by fair reaſoning without a ſeditious intention, that he meant to draw a juſt compariſon, and that he did not publiſh this work purpoſely to argue down the ſyſtem of law and the Conſtitution of this Country, I do not aſk you for your Verdict.

Gentlemen, what I impute to this work, is this, the Author miſrepreſents the Conſtitution as it ſtands, he does not ſtate the effect of thoſe Laws as he knew them, it was his intention not to draw a true repreſentation of the Conſtitution of this Country, but he ſet down with a de-

deſign to miſrepreſent it, and that he has ſacrificed in every page of his book, the real truth to a fondneſs for the principles of his Syſtem, and to forward which he had declared, was the intention with which he came into this Country.

Look at the book where he ſpeaks of the Chief Magiſtrate, and conſiders him as a king and as a man, and give me leave to ſay, that the wiſdom of the law of our Anceſtors, the wiſdom of the Law of England taught them to look at man as he is, they did not think with this ſelf ſufficient Author, that man was all perfection, but that we were beings ſuch as God had formed us, and that our infirmities were to be corrected by the ſyſtem of laws which were formed on deep reflection and on deep experience. Take and read this book through, and after you have done ſo, is there any of you, who can ſuppoſe that the King of this Country has any power of being hurtful to this Country? conſidering the weakneſs of infancy, the dotage of old age, and the imbecellity of human life in general: Why did not this Gentleman ſtate, that the Crown of this Country was a truſt for this Country, that the weakneſſes of infancy, the infirmity of old age, are all rectified by the infinite variety of checks, with which the law has guarded the execution of the chief Magiſtracy in this Country. Take it another way, obſerve, this Gentleman does not ſtate to his readers, the Conſtitution as it is, he has not the integrity to tell them, that the Conſtitution of this Country was acknowledged to be a Conſtitution ſecuring all the bleſſings of civil Liberty, not only by the Subjects of this Country, but by thoſe of other Nations, who were look-

ing at it as the beſt Conſtitution, that could be framed, a Conſtitution which is at once the envy and admiration of the World.

When this Gentleman was deſcribing the nature of our Conſtitution, why not ſtate the whole Truth? he ſhould not have villify'd it beyond fair reaſoning and ſober argument. Why not put it to the People of England as he ought to have done? and have ſaid, when I publiſhed my former works I thought ſo, and ſo, and, in ſupport of thoſe opinions, you will find I have publiſhed this work of which I can fairly ſay, you will find in this book ſober reaſoning, and fair diſcuſſion. I hope the law of England, never will prevent fair diſcuſſions, nor would this man have been an object of proſecution, if the work had contained fair diſcuſſion only, and not ſcandalous and malicious abuſe: but that not being the caſe, by perſiſting in this Publication, he enters into a conflict with the Law.

I ſay, the fair account of the ſenſe of the paſſages which will be read to you, is no more nor leſs than this, making the conſtituted authorities of this Country inadequate to the end. Gentlemen, I appeal to your own attention and obſervation, it would very ill become me to make any other appeal. The late Attorney General thought it neceſſary to follow up this Proſecution, my reverence for the Verdict of a Jury of England, and my regard for our excellent Conſtitution, as it is eſtabliſhed, has induced me to aſk for your determination.

EVIDENCE FOR THE CROWN.

The printed Proclamation produced.

Mr. VAUGHAN. I ſubmit to your Lordſhip, that the printed Proclamation unſupported by any evidence whatever, cannot be received.

Mr. ATTORNEY GENERAL. Mr. Juſtice Buller has received it.

Mr. GURNEY, At leaſt the Kings Printer ſhould be called to anthenticate it.

Mr. ATTORNEY GENERAL. That is not neceſſary to authenticate an act of Parliament.

Mr. GURNEY, That is a very different thing.

Lord KENYON. I think I ought to receive it, I will if you wiſh it, ſave the point for you.

Mr. VAUGHAN. I ſhould be obliged to your Lordſhip, certainly.

The printed proclamation read.

CHARLES HUMPHREYS ſworn.

Examined by Mr. *Solicitor General,*

Q. Look at that book, did you purchaſe it. (ſhewing him a copy of the Letter to the Addreſſers.)

A. Yes.

Q. Where.

A. No. 81, Biſhopgate Street.

Q. Of whom.

A. Of the Defendant.

Q. When.

A. On the firſt of February.

Q. You did it at the requeſt of the Lord Mayor.

A. Yes.

The title of the Pamphlet read.

Mr. VAUGHAN. With ſubmiſſion to your Lordſhip, I object, that the title of the Pamphlet, is not fully and ſufficiently

ciently described in the Information, the Information states only "Letter addressed to the Addressers on the late Proclamation." whereas the title continues, "By Thomas Paine, Secretary for Foreign Affairs to Congress, &c. and the names of the Publishers.

Lord KENYON. I must acknowledge that in my opinion, it is abundantly and fully described.

Mr. ATTORNEY GENERAL, The rest seems to be rather the title of the Author, than of the Book.

The Paragraphs read which were inserted in the Information, vide information.

Mr. GURNEY. My Lord, from the office copy of the record we were led to expect that we should find two variances in this Information. which, however it might possible be contended that they did not very materially alter the sense, we should have submitted, must be fatal, but these two variances have been attempted to be concealed by erasures,

LORD KENYON. I have nothing to do with the record, but as it stands at present, happy indeed is the Clerk who never made a mistake in transcribing.

Mr. GURNEY. My Lord, I should submit that the existence of the variances, in the copy of the record delivere to us, raises such a presumption as calls upon the Attorney General to shew that the variances were cured before the Issue was joined.

GEORGE STOREY, (Sworn)

Examined by Mr. BALDWIN.

Q. I believe you are Secretary to the Lord Mayor,

A. Yes.

Q. Do you remember the Defendant being before my Lord Mayor.

A. I do, it was customary when his Lordship received in-

information, anonymous or otherwiſe, to ſend for the perſon complained of, and in conſequence of ſome information which he received, he ſent for the Defendant.

Q. What paſſed on that occaſion.

A. My Lord Mayor aſked him whether the information was true, and that he had ſold the Publications mentioned.

Mr. GURNEY, My Lord I ſubmit this examination is irregular, unleſs Mr. Baldwin lays a ground for it, by aſking in the outſet whether any thing paſſed in this converſation relative to the pamphlet in queſtion.

LORD KENYON. You may aſk that queſtion if you pleaſe.

Mr. GURNEY. In the converſation you are relating, did any thing paſs relative to the "Letter to the Addreſſers".

Mr. ATTORNEY GENERAL. That will be a queſtion in Croſs Examination.

Mr. GURNEY. The preſent Examination is only calculated to raiſe a prejudice, by facts which are not relative to the cauſe.

LORD KENYON. Does this go to the fact of the Publication?.

STOREY. He replied it was true that he had ſold theſe Publications.

Mr. BALDWIN. Were there any publications mentioned?

A. I believe the *Rights of Man*, he ſaid the Deputy of the Ward had been to him, complaining of his ſelling thoſe books, but that his behaviour was ſuch, he being drunk at the time, that he had not paid that attention to him, that he otherwiſe ſhould have done.—He reaſoned with him very particularly on the impropriety of ſo doing, at firſt it ſeemed to give him very little concern, but he went away promiſing to deſiſt from ſelling them in future.

GEORGE

GEORGE STOREY, *croſs examined by* MR. GURNEY.

Q. How long was this converſation?

A. I think about ten minutes or a quarter of an hour.

Q. Are you ſure it was not much longer than a quarter of an hour.

A. I can't ſay,

Q. I believe you produced a letter.

A. I do not recollect a letter.

Q. Have you no recollection of a Letter being read, which the Lord Mayor had received from Mr. Reeves, at the Crown and Anchor reſpecting Mr Eaton.

A. I cannot ſay.

Q. Will you venture to ſay upon your oath, that the Lord Mayor did not read to Mr. Eaton, a long letter from Mr. Reeves.

A. I cannot recollect.

Q. Will you ſay upon your Oath, that ſuch a letter was not read.

A. No, certainly I will not. The only information I believe was written, in a diſguiſed hand, upon the back of a card of Mr. Eaton's, to the beſt of my knowledge and remembrance, this is the minute I made at the time, "Iſaac Eaton, about ſelling ſeditious libels, who promiſed to diſcontinue it.

Q. I will refreſh your memory reſpecting this letter, do not you recollect that Mr. Reeves complained of Mr. Eaton ſelling ſeveral ſeditious pamphlets beſides the Rights of Man, and among them *the Duke of Richmond's Letter to Colonel Sharman.*

A. I do not recollect it

Q. Will you venture to ſwear, that no converſation paſſed between Mr. Eaton and the Lord Mayor, about the contents of that letter.

A. I

A. I can't ſay.

Q. Do not you recollect, Mr. Eaton putting this queſtion to the Lord Mayor, "how it could poſſibly be criminal, to publiſh a pamphlet before it had been declared to be a libel by the verdict of a Jury".?

A. I cannot attempt to enter minutely into what paſſed, I cannot attempt to ſwear to any particulars.

Q. Will you ſwear that that, did not paſs.

A. No I will not.

Q But you do recollect Eaton's telling the Lord Mayor of this drunken Deputy who went to reprove him for a breach of the Law.

A. Yes.

Mr. BALDWIN, After this Converſation, did the Lord Mayor ſay any thing to him.

A. Only wiſhed him a good morning, and I believe he told him the penalties he would be ſubject to.

CHARLES HUMPHRIES, (*again*)

Mr. GURNEY, Mr. Eaton, did not ſell you this pamphlet very willingly.

A. He did not.

Q. I believe you was under the neceſſity of employing ſome art, to induce him to ſell it.?

A. I was, I was directed ſo to do.

Mr. ATTORNEY GENERAL. What do you mean by art, tell us what you did?

A. He aſked me for what purpoſe I wanted it, as I had purchaſed ſome of Mr. Paine's works on the 17th of January, he aſked me whether I would purchaſe the reſt, as there were more coming out, he aſked me if I wanted to bind

bind them up together, I told him I probably ſhould, he aſked me when I would call again, I told him in the courſe of a week or a fortnight.

Mr. GURNEY, It was on the 17th. of January, that you purchaſed the "rights of Man" for ſelling which, Mr. Eaton was tried at the Old Bailey.

A. Yes.

Q. In your evidence upon that occaſion, you ſtated that Mr. Eaton heſitated at ſelling you the "Letter to the Addreſſers" but that he did it in conſequence of his wife telling him ſhe knew you, and had ſold you ſome of Mr. Paine's works before.

A. I did.

Q. Upon that Trial the Jury found Mr. Eaton "*guilty of publiſhing, but without a crimnal intent.*"

A. They did.

Mr. ATTORNEY GENERAL. I don't care a farthing about it, but I muſt object this, it has nothing to do with this cauſe.

Mr. VAUGHAN.

Mr. VAUGHAN, *Counſel for Defendant.*

GENTLEMEN OF THE JURY,

YOU have now heard from Mr. Attorney General his opening, together with the whole of the evidence produced in ſupport of this information. And it has become my duty, as counſel for Mr. Eaton, to lay before you ſuch plain and ſimple obſervations as have occurred to a very plain and ſimple underſtanding, but which, I truſt will operate in your minds a concluſion directly oppoſite to that deſired on the part of the proſecutors, againſt this unhappy, or rather this unlucky, defendant.

But, Gentlemen, when I am told, and from ſo great an authority, that in this cauſe are required ſuch uncommon talents, to diſtinguiſh the pamphlet in queſtion from the crime of treaſon, and when I reflect on the miſeries which muſt enſue to this man and his family, in caſe he was convicted, my heart ſinks within me, to conſider the importance of having undertaken his defence. At the ſame time I am comforted, becauſe I know I ſhall be ſupported by the learned Judge, who ſits on the Bench; and if it ſhould, from any circumſtance, happen that I were unable to go through with this defence, you, Gentlemen, in diſcharge of your oaths, are bound to ſupply the deficiency. So that the Defendant has alſo to rely on the judgments of twelve of his fellow citizens; and therefore it is, that I hope and look for a verdict in his favour.

Such however is the ſituation in which we are placed, when proſecuted by his Majeſty's Attorney General, that

the chances are almoſt two to one, againſt any Defendant under ſuch a proſecution; for the Attorney General claims a right to reply to all that may be anſwered to his charge. Conſider this infinite diſadvantage to the Defendant, viz. that the proſecutor has two addreſſes to the jury, and therefore reſerves all the ſtrength of his argument till the time comes when he is to reply; and thus will it happen to-day. All that you have hitherto heard is but a ſort of proeme for what we are to hear: it is the protatic part of the drama, very neceſſary and well calculated for the cataſtrophe intended to be produced. We have been told indeed a great deal about this writing, its author, and its publiſher; but hardly a paſſage of it has been quoted. All has been matter of general reflexion; no principles have been laid down by which you might determine the queſtion before you, or by which we might have conducted this defence. We are to lay the grounds of the whole cauſe, and to build up a fortreſs of protection for this unfortunate man, whoſe thoughts were as far from thoſe imputed to him, by this charge, as the poles of the earth are from each other.

Gentlemen, it ſeems to have been expected, that you would hear from us a deal of outrageous declamation upon ſubjects of public liberty. If a man will ſpeak on ſubjects of that deſcription, it is impoſſible to be other than declamatory, becauſe, in general, they conſiſt of axioms, whoſe truth ſtares you in the face. And all that ſuch a man can ſay, is, "How excellent are theſe things; how indiſpenſible to our happineſs! How criminal muſt thoſe be, who attempt to deprive us of them!" But, Gentlemen, I am perſuaded, that fairneſs and candour are the beſt weapons we can uſe in behalf of the Defendant. I will therefore freely make to

you

you my profeſſion of faith on the principles by which I conceive we ſhould all of us be guided in this queſtion; I am very far from maintaining extravagant doctrines, or approving every thing I have heard reſpecting them.

Among the numerous proceedings, obſervable in our juriſprudence, there is no proceeding which contains ſo much obſcurity, ambiguity, and confuſion, as this charge of ſedition, malice, and ſo on, by Libel. I do not ſay the charge of libel, for that term contains nothing imputed to the Defendant by this information. Nothing can fix that upon him, but the adjectives implying the qualities to be found in this libel or book (for I uſe the term in its innocent ſenſe); and theſe qualities ariſe out of the intention he had in publiſhing this book. It is certain, that this ambiguity and confuſion have created in the minds of a great number of well meaning men extreme diſſatisfaction and diſcontent. Of this diſcontent, a great deal is well founded; but it must be owned, that a great deal is likewiſe unfounded. But, while on the one hand, it is contended, that no mere opinions delivered, but, that actions only, are fit objects of public puniſhment — it has on the other, with equal, if not greater vehemence, been maintained, that every thing, true or falſe, rational or otherwiſe, if it happens to be offenſive to particular deſcriptions of ſociety, is to be repreſſed with the utmoſt rigour which the law can inflict. Each of theſe opinions I hold to be extremely, though not equally, dangerous, and nothing ſhall at any time influence me either to defend the one, or the other, in the preſent cauſe, or upon any future occaſion; yet, Gentlemen, it is with no ſmall ſorrow, that I have obſerved the

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latter of them reduced to practice in a way ſufficient to alarm us for the very foundations of liberty and perſonal ſecurity. We have ſeen a ſyſtem of things unknown before to the people of England; we have ſeen perſons getting themſelves together in holes and corners, and erecting themſelves into an *Imperium in imperio*, under pretence of defending the Engliſh conſtitution. Theſe Aſſociators, for ſo they ſtile themſelves, are ſo many mere inquiſitors, who have ſpread themſelves and their ſectaries through every part of the country, from the Channel to the Tweed; and from thence Northwards; but the chief tribunal, and the grand inquiſitors of all, hold their office at the Crown and Anchor Tavern, in London. It is not immediately in evidence, but in my own mind I have not the ſmalleſt doubt that it is to them we are indebted for the proſecution of to-day. It is from them that advice againſt this unfortunate Defendant was communicated to the Lord Mayor; who thereupon employed his ſpies, his emiſſaries, or informers, or whatever elſe you pleaſe to call them, for the purpoſe of obtaining a conviction, which, if obtained, muſt bring Mr. Eaton and his family to inevitable ruin.

Gentlemen, when you conſider that I am counſel for a man in theſe circumſtances, you will, I am ſure, favour the little which may be offered to you on his behalf, with a patient attention. And you will look into all that has been or may be advanced againſt him, either in this information or out of it, with an eye of jealouſy and miſtruſt, which is never unbecoming an Engliſh jury.

Gentlemen, I truſt that Mr. Attorney General will not be diſſatisfied with the principles I have hitherto contended for. I declare in the outſet, that all malicious and intentional

miſchief,

miſchief, is, at all times and equally puniſhable, by whatever means it may be effected, and that it is the ſame, in point of criminality, whether ſuch intention be completed by the tongue or by the hand, by the pen or by the poignard. If, therefore, this has been proved on the Defendant, and that in the publication of this book, his deſigns were wicked, ſeditious, and malicious, as in the charge before you, he could have no claim whatever to an acquittal. As it is, I muſt intreat, you will examine attentively the different parts of the information, having previouſly conſidered the act of Parliament, known by the name of the Libel Bill, the benefits of which I ſhall not enlarge upon (the author and firſt mover of the queſtion being now preſent in Court) however gratifying it might have been to my own feelings.

Gentlemen, by that bill it is ſaid, that the jury, ſworn for the trial of the iſſue before them, in matter of libel, are to judge of the whole matter put in iſſue. If you have been frequently in this place, you muſt know that an iſſue on any trial, is nothing more, than an affirmation of the charge on one ſide, and a denial of it on the other, which the jury are to decide upon by the evidence produced to them. Now, Gentlemen, all that is in evidence amounts to no more than this, that the Defendant publiſhed a ſixpenny pamphlet, and that the Lord Mayor ſent to him, deſiring him not to publiſh *another* book, called, "The Rights of Man."

Gentlemen, I do not underſtand that the Lord Mayor is a lawyer: Where has he learnt his law? I ſuppoſe from the Crown and Anchor Tavern — his law, if he has any, muſt come from the other ſide of Temple Bar, perhaps from the Aſſociation we have ſpoken of, for I never heard

of

of its being extracted from coffee or ſugar, or any other article of commerce in this city. I know he is a municipal, but I never heard of his being a judicial officer, although he ſeems in this inſtance to have ſuppoſed he had an authority of the latter kind, and is of opinion, that by warning a man againſt any act, he has the power to prevent his doing it. But, Gentlemen, I ſubmit to you, that the whole of this hiſtory about the Lord Mayor is totally out of the queſtion, and that you ought ſo to conſider it; for the beauty of the whole is, that the witneſs has ſaid nothing about this pamphlet — he has told us, that the Lord Mayor never had any converſation with the Defendant, but concerning the book, called, "The Rights of Man," and of ſeditious publications in general. Does the Lord Mayor's opinion make them ſo? Moſt aſſuredly not. They are to be conſtrued and decided upon by your opinions, by a jury of the country; who are certainly, as Mr. Attorney General has ſaid, the great ſupport of the conſtitution; and I fear its greateſt, if not its only ſupport. And as that is now become your duty, let me again and again intreat you, that ſhould you have belonged to any of theſe Aſſociations, you will caſt from your minds every prejudice they may have created, ſo that it may no longer biaſs or contaminate your verdict.

The Defendant, not being much in favour, and having perhaps ſome private enemies among thoſe Aſſociators, nor with the drunken Deputy that you have heard of, is brought forwards, by a public proſecution, and is charged by the Information as follows: "That the ſaid Daniel Iſaac Eaton, "being a wicked, malicious, ſeditious, and evil diſpoſed "perſon, and greatly diſſafected to our ſaid Lord the King, "intending to ſtir up and excite diſcontents and ſeditions

"among

" among the ſubjects of our ſaid Lord the King, and to " bring the ſaid Proclamation into diſregard and contempt " among his ſubjects, and to alienate and withdraw the af- " fection, fidelity, and allegiance of his ſaid Majeſty's " ſubjects, from his ſaid Majeſty's perſon and government, " and wickedly, and maliciouſly, and ſeditiouſly, to inſi- " nuate, and cauſe to be believed, by all the liege ſubjects," &c. &c.

What! Gentlemen, is all this contained in the ſingle fact that is in evidence, viz. the ſale of a ſixpenny pamphlet? Were a man conſcious of all this, would he riſk the conſequence to gain by it a penny or two-pence? Would any of you riſk the puniſhment of ſuch an offence, if you knew it to be ſo, even were you reduced to the loweſt condition of life? Why, the multitude of evil deſigns here imputed to this act, is ſomething like Lord Burleigh's ſhake of the head; which, being explained, meant a long ſeries of reflections on the conſequences of the Spaniſh armada. The charge is indeed of no common ſort, and we are told, by Mr. Attorney General, that it is little leſs than Treaſon, at leaſt a couſin German, or ſome near relation to it. But if ſo, why is the Defendant brought here for a miſdemeanor? Why is he not proſecuted for the crime of which he is guilty, ſo that a due proportion may be obſerved between his crime and his puniſhment? You, Gentlemen, will remember, that you are not brought here to judge of any charge like that of Treaſon; but of that which ſtands upon this record, imputing to the Defendant Objects and Motives, which, to criminate him, muſt be made out to your certainty and ſatisfaction.

But, Gentlemen, be pleaſed to attend to the paſſage I have juſt read from the information, and obſerve how the motives and the objects, imputed to the Defendant, and the means he is ſaid to have uſed for the attaining them are huddled together, without diſtinction, and as it were with a purpoſed obſcurity and confuſion. I will endeavour to divide and analyze it, ſo that it may be reduced to common ſenſe. And firſt it appears by it, that his *motives* were malice and ſedition: ſecondly, that his *objects* were to bring his Majeſty's perſon into hatred and contempt, and to excite ſeditious meetings and conventions among his Majeſty's ſubjects; all which were to be effected by the *means* of bringing his Majeſty's Proclamation into diſregard, and by repreſenting the Conſtitution and Government, as a ſyſtem of tyranny, injuſtice, and oppreſſion. Whether the Defendant has had ſuch motives and objects you can only judge by the evidence of the means he is ſaid to have uſed, viz, the mere act of ſelling this book to the *Worthy Informer*, who is the witneſs in this cauſe.

Gentlemen, Mr. Attorney General, reſerving himſelf, no doubt, for his reply, has taken but little or very ſlight notice of the pamphlet before you; but when the time comes, you will hear the whole artillery of his eloquence diſcharged upon it. Hitherto, we have heard a great deal about the "Rights of Man," and the circumſtances of its publication, and about the intentions of its author; but I aſk, what have either of them to do with the queſtion you have to try? Is any part of that book upon the record, or before the Court? Certainly not. And yet they are all mixed up together, ſo as to produce a concluſion in your minds

fatal

fatal to the Defendant, who is by this means to be convicted of deſigns fatal to the Engliſh conſtitution, "the envy and "admiration of the world." As to this latter expreſſion, it is indeed in the pamphlet; But will the learned Gentleman contend, or can you be perſuaded, that every man and every book, telling you, that the conſtitution of England is not the envy and admiration of the world, muſt therefore be criminal?

Gentlemen, I believe, nay, I know I could read you many books, in which it is ſaid, that the Engliſh conſtitution is neither the perfection of human wiſdom nor of human happineſs. Obſerve, Gentlemen, that I do not partake of ſuch ſentiments, for I hold the conſtitution of England in that ſtate of purity wherein I know it has exiſted, and in which I hope, before I die, to ſee it exiſt, in as much veneration as any perſon, I am perſuaded, I ſhall not be miſunderſtood, in any obſervations reſpecting it; but its original and pure condition is well worth looking after, when we are told, by a very elegant Writer, that the Engliſh conſtitution had, for a long time, been advancing, with rapid ſtrides, towards popular Government; but that, now having attained its limit in that way, it is taking a contrary courſe, and is now declining, by gentle degrees, towards a perfect and abſolute Monarchy. He contends alſo, that it is much better to continue, than trying to relieve ourſelves from ſuch change of our condition; becauſe it is much quieter to be as we are; and that all this will happen by ſlow and imperceptible gradations. This, ſays Mr. Hume, is the natural death, or (to uſe the delicate expreſſion he has borrowed from an ancient language) the *Euthanaſia* of the Engliſh

liſh conſtitution. Gentlemen, there is no doubt, but that death is a ſtate of profound quiet; but I hope, that whenever our country ſhall arrive at ſuch a diſſolution of its principles, this author's deſcription will be ſomething more than metaphorical. I hope, that the natural and political exiſtence of every Engliſhman will then be loſt together. Of this I am ſure, that when the latter is gone, the former is not worth having.

Let us look a little farther into the ſtructure of this information, and I think we ſhall be led to no ſmall diſcoveries as to the object intended by it. There are in all ſix paſſages extracted from the book, and charged as criminal upon the publiſher, Mr. Eaton. Theſe paſſages are ſome of them ſaid, to be of and concerning the conſtitution and government; others of and concerning the repreſentation, power, and authority of Parliament; but the ſixth and laſt is not ſtated to be of and concerning any thing. However, Gentlemen, as it is ſaid of a good epigram, that its ſting is ever to be found in its tail; ſo, as I take it, it is with this Information, the whole ſcope and deſign of which may be found in the laſt paſſage, extracted from the pamphlet. Mr. Paine ſays, "that inſtead of reſorting to rotten boroughs and "abſurd corporations, for Addreſſes, or hawking them "about the country, to be ſigned by a few dependent ten-"ants, the beſt way would be to come to the point at once, "and to aſcertain the ſenſe of the nation, by electing a "National Convention." Why, Gentlemen, if this is of and concerning any one, it muſt be of and concerning the rotten boroughs, the abſurd corporations, and the dependent tenants: And is it ſo wicked, ſeditious, and malicious,

to

to treat with diſreſpect ſuch great and diſtinguiſhed perſons, as the voters in rotten boroughs, or the dependents, who ſign Addreſſes?

Now, Gentlemen, as the extremes of things are ſaid often to meet, let us bring the end of this Information to the beginning, and obſerve how exactly they fit one another. At the outſet we are told of evil deſigns againſt the Conſtitution, and at laſt of ſedition againſt borough-mongers and rotten corporations. Why, Gentlemen, if ſuch rotten Corporations exiſt (which you underſtand as well as I do,) and if they are o be upheld as the legitimate conſtitution of this country, can there be a doubt of the cauſe of this proſecution? Why does not every one ſee that it is to protect Borough-mongers, and their property, that this Information has been filed? If I was poſſeſſed of, or connected with this ſpecies of property, (for ſo it is called,) and were I baſe enough to wiſh its continuance, for my own profit and advantage, what would be my conduct? Why I ſhould caſt within my own mind, whether it would not be proper to ſuppreſs all publications on the ſubject of boroughs. If I were determined to ſupport that intereſt, *per fas et nefas*, I ſhould never think it ſafe till I could prevail in having a Proſecution. I ſhould never reſt until I had thrown the broad ſhield of this Information between myſelf and the Public. But the Attorney General is a man of honour and a gentleman, ſo that without telling the plain naked truth, I would ſay; "Sir, here are baſe and virulent libels abroad; "they ſwarm, they fly in covies over the nation; and they "contain ſtrong inſinuations that the Government is not ſo "pure as it ought to be. They tell us, the Government is "expenſive (wicked creatures to ſay it is expenſive!) And

"that

" that this expence goes to Courtiers alſo. Now, Sir, we " are the perſons to whom this Government is beneficial, " and what is to become of it when we are no more? Pro- " ſecute in time, or where is this to end; for what is the " Engliſh government but a majority of the boroughs in " Parliament?"

And yet, in this point of view, it may be doubted, whether proſecutions of this kind are very prudential or a political meaſure. For, firſt, they raiſe into light all that might be kept ſecret; and revive in our memories what otherwiſe might have been forgotten. How long it is ſince any of us have ſeen "The Rights of Man," or any other of Mr. Paine's writings? As objects of ſale, they have long diſappeared from before the public eye; and this Defendant would not have been brought here to day, on that account, had it not been for the ſpies of the Lord Mayor, who have entrapped him into his preſent unfortunate ſituation.

For good and ſufficient reaſons, no doubt, " The Rights " of Man" have been introduced into the cauſe, which, give me leave to ſay, muſt want a deal of bolſtering, if what is not in queſtion, muſt be brought forward in its ſupport. Permit me alſo to ſay a word or two on that pamphlet. On account of certain paſſages, reflecting on the Revolution and the Houſe of Hanover, the author was convicted by a Special Jury in this Court. But what a uſe has there not been made of his name, in every town and village throughout the kingdom? nay, what uſe was there not made of it before his trial, and before his conviction? Let me call to your memories, whether going into any place of public reſort, you did not find all the Journals of the day ſtuck as full as

they

they could hold, with paragraphs, as malicious and as scandalous as ever were vented on the head of man; and this before his conviction, when he ſtood under the protection of the law, and I will add, under that of Mr. Attorney General's Information. For, by the ſame laws, under which he was proſecuted, ought he to have been protected; and it would greatly have added to the dignity of the character of that officer, had he cauſed the ſame proceedings to have been filed againſt the calumniators of Mr. Paine, as had been exhibited againſt the writings of Mr. Paine. It would have been an act worthy of the *Cenſor Morum* in a great and a generous nation. Political enmities would have ceaſed, and nothing but a ſenſe of juſtice would have reigned among the people. Inſtead of that, what have we ſeen? One part of our fellow ſubjects have been aſſociated againſt the other. An *Imperium in imperio* has been raiſed amongſt us, as if the laws of the country were inſufficient for public purpoſes.—This author, or rather his name, has become a means of oppreſſion, raiſed up by theſe judicial dæmons againſt the poor inhabitants of this country, who have happened unfortunately to imbibe, with their mother's milk, a ſtrong attachment to liberty. After all, is this book anſwered?—By whom is it anſwered? By no one whom any of us remember. I am perſuaded that there muſt exiſt, in the hearts of many people, a lurking affection for this man, ariſing from the re-action of the proſecution, which his name has undergone. Is it then wiſe, to be eternally proſecuting his Book, and every one, who happens, in an unguarded moment, to ſell it for the ſmall advantage that may accrue from that ſale?

The paſſages, to which the exceptions were made, were omitted by the printers in their ſecond edition of "The "Rights of Man." The printers of that edition were proſecuted; — they pleaded guilty, and were convicted. Surely, here was example ſufficient, if that alone was the object. — Why extend it, beyond the printers, to the numberleſs publiſhers, who, perceiving in it many maxims, not only innocent, but laudable, publiſhed till ſuch time as the ſecond edition was condemned by the Courts of Law. From that time they ſtopped their ſale: yet, after all this, it is judged neceſſary to bring Mr. Eaton before a jury for this Letter to the Addreſſers, in order that he may increaſe the number of perſons now under fine and impriſonment! Good God! Is every thing with the name of Thomas Paine to be libellous and criminal? When he tells you, that our country, ſhould be the world, and our religion to do good, I ſhould be glad to know whether that and other opinions of the ſame kind are criminal. Gentlemen, all this perſecuting practice reminds us of Cadmus and the ſerpent. Theſe writings reſemble the virulent teeth of that ſerpent, which he would not leave above ground, but planted them beneath it, until they roſe in ſuch a crop, as no honeſt or well meaning man can ever wiſh to return in this enlightened nation.

But let us look into other paſſages of the Letter to the Addreſſers, contained in the Information, and reſpecting the Conſtitution. It is charged, and held out to be a great crime, that Mr. Paine has ſaid, "that it is a good Conſti-"tution for courtiers, borough-holders, and penſioners."— Why, if there are ſuch perſons, and they are "the active

"leaders

" leaders of Addreſſes," who doubts but that it is good for them ; their actions prove that they think it ſo. From borough holders (if any ſuch people exiſt) may they not become courtiers? And from courtiers may they not become penſioners? And if ſo, what is the ſtate of the Engliſh conſtitution? Is it conformable to the ſpirit of the conſtitution, that the repreſentation of the country ſhould have become the property of a few individuals? Of what nature is property? It is the rightful poſſeſſion of what I have acquired by my induſtry, or what is confirmed to me by the laws of the land. But where is the law, either common or ſtatute, or is it among any of the ſyſtems of law, which, tho' permitted amongſt us, ſeem, as it were, to croſs our original juriſprudence, that we find a toleration for this diabolical ſpecies of pretended property. Why, ſuppoſe a place, without either houſe or tree, ſhould ſend as many members to parliament as the county of Middleſex, is this to be called a property? If you, an Engliſh jury, can look on ſuch property with any thing but abhorrence: If you can conſider it as a legal part of the Engliſh conſtitution, your hearts do not beat within your boſoms, after the manner of your fathers, who did ſo much for its eſtabliſhment, on principles of wiſdom and independence.

Mr. Paine goes on to ſay, rather ſtrongly, " that it is a " bad Conſtitution for ninety-nine parts of the nation out " of one hundred." This is ſaid, in reference to the perſons, who, as he ſays, find their advantage under it. But why may we not ſpeak of it as we think of it; why not ſpeak as freely of the body politic, as of the body natural? It is my misfortune, to have a very unhealthy conſtitution;

and when I meet with a man of the ſame appearance with myſelf, I ſuppoſe he has a very bad conſtitution likewiſe. In the ſame manner, when I find that in all the conſtitutions of Europe there was once that third eſtate, which is ſaid to be the ſplendour of our legal government; and when I find that it is now loſt in them all, by means of fraud and corruption, I cannot help looking with anxiety to our preſent repreſentation. We are told, it is the envy and and admiration of the world; yet, in point of fact that is not true, as we know from two recent examples. But, ſays Mr. Attorney General, till within theſe three years the kingdom of France had a mild and beningnant government.

Gentlemen, I do not know whether the learned gentleman has ever travelled in that country; but of this I am ſure, that if ſo, he is the firſt traveller who ever returned with ſuch an account. Are not our books filled with relations of baſtiles and of cruel impriſonments? If ever you reſided in the capital of this beningnant government, what did you find but a motley appearance of filth and finery; and in the provinces what did you obſerve but luxury and grandeur in the midſt of diſeaſe and poverty. The griping hand of corrupt courtiers had faſtened upon every thing profitable or valuable, while the cottage of the peaſant remained unthatched, his children ill cloathed, and worſe educated, to ſupport the folly and licence of the metropolis. Is it to be wondered, if being ſo treated, the people ſhould now break forth in violence and cruelty? But give me leave to ſpeak from my own experience as to the mercantile and middle ranks of life in France, among which I have known men of as much virtue, and of as pure principles, whether moral or political, as ever exiſted in this country or any other

I aſk

I aſk Mr. Attorney General, and I hope for an anſwer to this queſtion. Has this obſervation on the Engliſh repreſentation never been made before? I aſſert that it has, and in much ſtronger language, and I hold the proof in my hand, viz. the Petition preſented to the Houſe of Commons, accepted by the Houſe of Commons, and entered on the Journals of the Houſe of Commons. It is a petition, received at a time when others were rejected on the ſubject of a reform in our parliamentary repreſentation. Permit me to read you two extracts; and firſt it is ſtated, "that the Petitioners com-"plain of a Grievance, detrimental to their intereſts, and "contrary to the ſpirit of the Conſtitution."

A grievance, if I underſtand the term right, is ſomething bad, if not uncommonly bad; and what is the grievance? Why, "that the elective franchiſe is ſo partially and un-"equally diſtributed; and in ſo many inſtances committed "to bodies of men, of ſuch very limited numbers, that the "majority of your honourable Houſe is elected by leſs than "fifteen thouſand electors; which, even if the male adults "in the kingdom be eſtimated at ſo low a number as three "millions, is not more than the *Two Hundredth* part of the "people to be repreſented."

The proportion of the nation repreſented is but the two hundredth part of the whole! And this is a *grievance*, entered as ſuch on the Journals, and with the conſent of the Houſe of Commons. Why then, one hundred and ninety-nine out of two hundred are unrepreſented, which is a *grievance* in the Conſtitution. Will it be ſaid, that this is not the ſame language with that of Mr. Paine? Is it not a *grievance?* Is it not bad for one hundred and ninety-nine out

of two hundred? All the difference conſiſts in the larger meaſure of badneſs complained of by the petitioners; ſince Mr. Paine ſays, the Conſtitution is bad for only ninety-nine out of one hundred. If ſo, is it criminal to have written in this pamphlet, what is at leaſt not diſcountenanced on the Journals of the Legiſlature itſelf.

Think not, Gentlemen, that I mean to ſpeak with ſlight or diſreſpect of that Petition, or of the Gentlemen who ſigned it. In my mind it does them immortal honour: and, purſuing that line of conduct, as I doubt not they will, it will render their names dear to our lateſt poſterity.

Thus far, I hope, that the Defendant is reſcued from ſome of the charges in this information. In one of the paſſages, to which I have alluded, it is ſaid, that the Conſtiturion, conſiſting of three ſeparate ſyſtems, is expenſive. What then! May I not ſay ſo without any breach of the truth? We are a great and commercial people, with great eſtabliſhments, colonies, and foreign poſſeſſions. It may be good to have there an extenſive military force, with an expence adequate to thoſe purpoſes, upon the ſuppoſition, that it is faithfully applied. But it is ſaid, by Mr. Paine, and here ſeems to be the great crime of all, "that we have "yet a Conſtitution to form; and that the means ſhould be "by a convention." All this we are told, is highly culpable, if not treaſonable.

Gentlemen, it is not fair to proſecute any man for words of a doubtful meaning, and nothing contributes more to injuſtice than a miſrepreſentation of an author's language. — Convention was not always an odious term amongſt Engliſh-

men;

men; and, ſtanding as it does in this book, how do you know but the author might mean exactly ſuch a convention as that of 1688?

Had the Information ſtated this fairly, it would have placed together, upon the record, all that was advanced by the book on the ſubject: we ſhould then have found that the writer, ſo far from wiſhing diſorder and confuſion, has ſtated, the manner as well as the reaſons, for carrying it into execution. "I wiſh," ſays the author, "that Mr. Grey, "ſince he has embarked in the buſineſs, would take the "whole of it into conſideration. He would ſee that the "only motion he could conſiſtently make, would be, that "Parliament ſhould *recommend* a convention." What is this, but providing the moſt peaceable mode for ſuch a meaſure? Let it originate with Parliament; it is poſſible they may be willing to abdicate ſuch part of their power, which may be good for the people to poſſeſs; they may think it fitting to cut away the different corruptions which the hand of Time has introduced. If you could bring the wiſhes of the people to one point, they would know their own political intereſt too well to do themſelves a miſchief, and you would know whether they meant to have any, and what reform. The convention of France, of whoſe acts we have been told ſo often, is no where mentioned in the courſe of the book; which, indeed, was publiſhed before any of us heard there was ſuch a thing in contemplation. It is eaſy to paint the maſſacres which have taken place in that country; and you will hear of them more than once, in the courſe of Mr. Attorney General's reply; but after all, they are ſubjects of ſorrow, and not of exultation; for though the peo-

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ple of that country are now our enemies, they are ſtill our fellow creatures. If we are to reaſon from the example of conventions, caſt your eyes on the other ſide of the Atlantic; compare the effects among thoſe who reſemble us in laws, in manner, in language, in religion. Behold the laws adminſtred at a ſmall expence; the commerce and population of the American continent increaſing, and extending beyond what could have been foreſeen or believed; and then determine whether the argument is for or againſt conventions in matters of reform. As to what is ſaid of our having no Conſtitution, take the word Conſtitution in the ſenſe here defined, and that completely juſtifies it. Every writer is to be underſtood according to his own definitions; and the only anſwer I ſhall give, is the paſſage of page 17. *A conſtitution is a thing antecedent to Government; it is the act of the people, creating a Government, and giving it powers, and defining the limits and exerciſe of the powers ſo given.*

I have but two remarks to add; — the firſt of this inſtrument, and this charge called an Information. In form, it has an omiſſion, which is ſomewhat new, I believe, intirely. There is omitted one of the principal qualities of the charge of libel, I mean the word FALSE. Conſider what a difference that muſt make in the extent of any charge. For will it be ſaid, that there is no difference between a direct political truth, and a direct political falſehood? I have not made this an objection, in point of law, to the court, becauſe it may be ſo argued in a future ſtage of this proceeding, if neceſſary. But it is a queſtion for your conſidering the whole matter put in iſſue, whether that word FALSE ought or ought not to have been left out. Is it *true*, that these

Addreſſes

Addreſſes come only from rotten boroughs and abſurd corporations? Is the reſt of the matter of this book *true?* It muſt be either true or falſe; and it is not charged to be FALSE. Why then, I aſk, is it fitting, upon ſuch a charge, that Mr. Eaton ſhall be brought here, and attacked by this formidable phalanx, by ſuch a regiment of advocates as we do not often ſee, the Defendant having but two inexperienced men to oppoſe the moſt veteran and devoted troops in his Majeſty's ſervice.

It remains for me only to obſerve, as to the intention of the publiſher, which, if innocent, I care not what you think of the pamphlet. Upon this ground I ſet my foot. The converſations held at the Lord Mayor's, and the publication by the Defendant, were both prior to any conviction of this book. The proſecutors have attempted to prove the intention; but I ſay, they have failed in this part of their caſe. I ſhall leave the whole upon this one queſtion. DO YOU OR NOT BELIEVE, THAT WHEN THE DEFENDANT TOOK THIS BOOK FROM HIS SHELF, WITH THE ONE HAND, AND RECEIVED SIXPENCE FOR IT WITH THE OTHER, THAT HE MALICIOUSLY AND MISCHIEVOUSLY ENTERTAINED IN HIS MIND THOSE CRIMINAL MOTIVES, THOSE CRIMINAL OBJECTS, AND THOSE CRIMINAL MEANS ALLEDGED AGAINST HIM, AND ALL OF WHICH YOU ARE BOUND TO FIND BY YOUR VERDICT?

Gentlemen of the Jury; I have now to ſurrender the Defendant into your hands. Take him; do what you pleaſe with him; but recollect, that the ſituation he ſtands in to-day may become that of yourſelves to-morrow. For you alſo may be accuſed, and be as little guilty of the charge as Mr. Eaton,

Eaton, while the only difference between you, may be that of your ſeveral properties; for he, unhappily, is not worth fifty pounds in all the world. Nay, were it in private, I ſhould not fear to aſk you, whether by reading aloud, or by lending, or in ſome other way, expoſing this book, you have not made yourſelves liable to proſecution. All this might happen to you without any ſeditious or malicious motives. And can you lay your hands upon your hearts, and ſay, that the Defendant publiſhed with thoſe motives. Look well to the charge, and ſee whether it is proved to your ſatisfaction, by the evidence produced, or by that of common ſenſe. — Suffer no vile prepoſſeſſions to biaſs you, nor let any eloquent parts of the reply diſtract your judgments. Remember, that you are to ſacrifice no victims to clamour, or to vulgar reputation: But that the eyes of your country are upon you in the verdict you are preſently to deliver. Reflect upon it calmly, conſider it coolly, as a duty that you owe to yourſelves and to your poſterity, to your conſciences, and to your God.

And if a prejudice ſhould have been inſtilled into you, that whenever Liberty is mentioned Property is in danger, do not be carried away by it, but ſee whether Property does not increaſe in the ſame proportion with Liberty. Look around, and ſee, whether there ever was a great and commercial country where there was nothing but ſlavery; the graſs grows in the ſtreets of Antwerp, which was once the common mart for all the nations in Europe: but, from the moment that Liberty was cruſhed in that city, Commerce took her flight, and its mercantile proſperity was no more. To inſure the principles of public liberty, is to inſure the exiſtence of property in this country. You will therefore coolly, but ſolemnly, conſider on your verdict as you value

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its conſequences to yourſelves and to the public; as you are true and honeſt men; as you are freemen and merchants of the city of London, ſpecially choſen, and ſworn for that duty.

But, Gentlemen, I beg pardon for taking up ſo much of your time. You are now going to hear, from one of the firſt men in the country, all that his duty requires him to urge in reply. You will obſerve it accurately, and far as it affects the Defendant. As to his acquital, or his conviction, I ſit down, in the fulleſt perſuaſion, that your verdict will terminate in the former; and that you will ſend him home with a joyful heart, to comfort his family.

REPLY.

MR. ATTORNEY GENERAL.

Gentlemen of the Jury,

IF I did not think the preſent caſe of the greateſt importance, I would not trouble you even with theſe few words in anſwer to a ſpeech which you have heard delivered with unqueſtionable abilities and talents, but where much has been ſaid entirely foreign to the queſtion before you, if thoſe few words did not appear to me to be exceedingly material.

Gentlemen, Whether it has ariſen from cuſtom, or from what cauſe it may have ariſen, I cannot ſay, but it has ſo happened that every queſtion of this kind is generally made rather the trial of the Officers of the Crown, inſtead of the

Defendant, by the imputation of unworthy motives to *that* Officer of the Crown in inſtituting this ſpecies of Trial.

Gentlemen, my learned friend has done me the honor to ſuppoſe that I have done that for which no man in England entertains a more ſovereign contempt than myſelf, which is that of making an eloquent ſpeech on an occaſion like the preſent, ſince it has always appeared to me that the duty of a Counſel for the proſecution conſiſts in ſtating facts fairly to the Jury, and reaſoning with candour on thoſe facts. I ſhould betray that important and ſacred truſt which has been repoſed in me and ſhould no longer deſire to be continued in the diſcharge of the duties of that ſituation which I unworthily fill, if I departed from thoſe ſacred principles which actuate my conduct in this place, as the ſervant of the Crown, proſecuting a ſubject of the Crown, well knowing, that I am bound by the duty of my office to do Juſtice to that ſubject equally as much as to the Crown itſelf. Gentlemen. If I betray my duty to that ſubject, I betray my duty to the Crown. It is the duty of all to acquieſe in your verdict; and God forbid that I ſhould, ſtanding here in the exerciſe of my duty, betray any wiſhes for any other verdict than that which will be dictated by the ſtricteſt juſtice.

Gentlemen, I am bound to do more than this; to aſſure you, and through you to aſſure the Public, that I did not bring this charge before the Public till I had duly conſidered it, and the conſequences: I muſt ſay it, not in vanity, but in gratitude, and as a duty due to the individual himſelf, whom I here repreſent, that no way can ſo certainly inſure his approbation as the fair and juſt exerciſe of my beſt talents.

Gentlemen,

Gentlemen, I wiſh you carefully to conſider the caſe as proved to you, and to determine, without prejudice! far be it from me to urge you to deliver a verdict againſt the Defendant, if the caſe is not proved to you; if the caſe is not a caſe of guilt, I doubt not but he will meet with an acquittal; if it is a caſe of guilt, it is my duty to aſk a jury of the country for their verdict. When this Gentleman, ſitting by me, informs you, by your verdict, that the Defendant may be ſubjected to fine and to impriſonment; and that he has a wife and ſeveral children dependent on his labours; God forbid that I ſhould have a temper ſo diſcordant with the lenity of thoſe laws under which I live, but to wiſh that you, acting under that conſideration, will yourſelves be ſatisfied, as to your verdict, as humane men, and as conſcientious men, but above all, as jury men, under the oath you have taken. No man more warmly wiſhes than I do that you ſhould conſider the conſequences of your verdict carefully, and deliberately, and form your deciſion with impartiality.

Gentlemen, I will now only trouble you with a ſingle word with reſpect to thoſe aſſociations in the country, to which my learned friend alluded. Gentlemen, I do not ſtand here to-day, to diſcuſs before you, whether they were right, or whether thoſe are in the right, who have choſen to call them an *Imperium in imperio*. My learned friend has ſaid that, in which I perfectly agree with him, which is, that this buſineſs was commenced by the late Attorney-General; a gentleman, who, in the diſcreet diſcharge of his duty, never can be exceeded by any ſucceſſor,

Of that gentleman I will ſay, that had he been called upon to protect Mr. Paine, if Mr. Paine could have ſatiſfied him, that it was a caſe which admitted of a defence, no man living would have given him a more willing ear: Gentlemen, you all know, that the perſons, conducting theſe proſecutions are bound to carry them on in diſcharge of the duties of their office, and that for the public good; and men are placed in theſe ſituations with a view to make themſelves uſeful to the country. But you have had in proof, that which I believe, when it once comes to be fully conſidered, will not allow of any extenuation; for what did Mr. Paine do? He came into this country, for the expreſs purpoſe of publiſhing ſuch a work, as never was publiſhed here before. A jury was aſked whether that book was a fair, reaſonable, honeſt diſcuſſion, ſtating the facts as they are, and reaſoning upon it honeſtly. This jury gave their determination in this place, that that publication was a libel; he directly goes and publiſhes this book, which is now before you, and in it he libels the Attorney General, and diſclaims all reference to a jury. Is the Defendant then, who publiſhes ſuch a book, and under ſuch circumſtances, a perſon, who can have any very great claims to indulgence?

Gentlemen, this is not all; for my learned friend introduces to me a principle, which I confeſs, as far as relates to my obſervation, is perfectly new; he ſtates it thus, that a book is not to be conſidered as libellous, when it comes out of the hands of the publiſher, until it has been proved ſo by a jury. Here is ſuch a receipt for diſobedience to the law of the land, that for my own part, I do not, on this principle,

principle, ſee what could operate to the conviction of the author or publiſher of any publication whatſoever. Much has been ſaid about the Petition of the Society of the Friends of the People, in the endeavour to palliate the expreſſions employed in this pamphlet. But, Gentlemen, having the honour to be a Member of the Houſe of Commons, I will mention you the difference between that Petition, preſented to that Houſe, and this publication. In that Petition, certain grievances were ſtated indeed, but that in the moſt reſpectful manner. I pray God, that there never may come a time that the ſubjects of this country may not ſtate to the Legiſlature of the country what they conceive to be grievances, whether they really are grievances or not; but this is a publication that does not ſtate them in a reſpectful manner, but is a direct attack on the Magiſtracy and Legiſlature of the country; and really this book was ſuch, that my learned friend was put to a ſtretch on the occaſion. He was obliged to have recourſe to the convention of 1688, to excuſe the propoſal of a convention made by this author; but where is the ſimilarity, I confeſs, I can diſcover none. This author, in fact, ſtates, that if the people poſſeſs not thoſe things, they are not to look to the legiſlature for the remedy; and now I am to repeat what my learned friend ſaid; and he is counſel for the publiſher of a book which vilifies the whole of the Revolution. I tell you, that every one has a right to perſonal liberty and perſonal ſecurity; and that every one has a right to that property, which labour and induſtry have procured him. We can here enjoy, and leave to our children that property, which, under the bleſ-

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ſing of Providence, we have been able to obtain. That right has been declared over and over again, to be the indiſputable and indubitable right of the ſubjects of this country,

My learned friend ſpeaks of the oppreſſions of the old government of France. I ſay, that compared with the preſent exiſting government of France (if it may be called a government) it was mild; but when you talk of baſtiles, will my learned friend count with me baſtile for baſtile; if he will, he will ſoon be counted out of Court. Gentlemen, no man can diſpute it, that more of real liberty, and of ſolid public happineſs, has in fact been enjoyed, for a period of time, in this than in any other country under heaven. — Now, if you look back to the fifteenth page of this book, you will perceive that this author has wickedly and blaſphemouſly employed, from the Holy Scriptures, that paſſage, which contains, I believe, the expoſtulation of the Almighty with the Jews, when they wanted a king. I believe, with this author, that if a thing is good, it will not ſuffer by inveſtigation and diſcuſſion; ſtating it properly, meaning to do all the miſchief which the work is calculated to do; but my learned friend ſays, that an act is never criminal till it is proved ſo. Therefore the queſtion before you is, Is the work criminal? Is this publication criminal or not?

Gentlemen, I am not aſhamed to ſtate, in the face of this Court, and in the face of the country at large, that there is not a queſtion relating to the boroughs of this country, that can come with propriety into the queſtion, which now waits your determination. And as to thoſe, who talk of

reſtoring

reſtoring to the conſtitution that purity, which never exiſted, it ſhould be conſidered, that this is a ſubject upon which a man may reaſon ſpecioufly; but upon which he may ſpeculate rather inaccurately. When that Petition was preſented to the Houſe of Commons, the poſitions it contained deſerved a great deal of attention; and I hope they received that attention from me, and that I acted conſcientiouſly in the diſcharge of my duty.

Gentlemen, I ſaid that this publication is not Treaſon, but it certainly approaches as near to Treaſon as could be, although I believe the author knew that it was Treaſon. I am aſked, why the Defendant is not indicted for Treaſon. I anſwer, for this plain reaſon, his offence does not quite amount to Treaſon.

Gentlemen, I have a right to aſſert, that the firſt man in the country, as well as well-informed foreigners, have all looked to the government of this country as the beſt conſtitution that ever was eſtabliſhed. Why, Gentlemen, look to the paſſage which has been read to you. "It is a good "conſtitution for courtiers, placemen, penſioners, borough "holders, and the leaders of parties; and theſe are the "men that have been the active leaders of Addreſſes. But "it is a bad conſtitution for at leaſt ninety-nine parts of the "nation out of one hundred; and this truth is every day "making its way." Now, in thus addreſſing thoſe who are not capable of comparing government with government, and forming a proper judgment, conſider the pernicious conſequences that may ariſe. When the affairs of a neighbouring

ing nation were referred to, it would have been fair to have obſerved, that this author has not told his readers of the advantages which had accrued to this country ever ſince the eſtabliſhment of Monarchy in its true principles, at the time of the Revolution; ſtating the ſubject rationally, diſcretely, and deliberately.

Gentlemen, my learned friend talks a great deal about America; and here I muſt obſerve, Mr. Paine, a ſubject of America, choſe to prefer the government of that country, if he choſe to prefer it to that of Great Britain, on account of the greater expence of that of Great Britain, which in truth had paid for the government of America, would it not have been fair to have ſtated that fairly. It is one thing to eſtabliſh principles, by which the government of a country may be accellerated: and another thing to excite uneaſineſs in a country, by the means of ſaying what he knows not to be true. Should he not have told his readers, that in a country, like America, where both the country and population differs from that of this country, it is impoſſible to ſay that the ſame ſyſtem ſhould hold good, with reſpect to the government of the two countries.

Gentlemen, the next paſſage in the book is, "it has ever "been the craft of courtiers, for the purpoſe of keeping up "an expenſive an enormous civil liſt, and a number of an- "tiquated places and offices, at the public expence, to be "continually hanging England upon ſome individual or "other, called a king, though the man might not have ca- "pacity enough for a pariſh conſtable." Gentlemen, a man who

who wiſhes for hereditary ſucceſſion, ought not ſo to expreſs himſelf. Gentlemen, what does he ſay! he ſays, " an " individual, called a king, though the man might not " have capacity to be a pariſh conſtable." Gentlemen, am I talking to Engliſhmen or am I not. If there is a pariſh conſtable here, I may tell him his duty is to protect the liberty of the ſubject; and while he does ſo, he will have the protection of the great magiſtrate, whoſe repreſentative he is in ſome reſpect. If I had treated the conſtable in this way, I ſhould have derogated from that manly and proper conduct which is due to every publate officer in every public capacity.

Gentlemen, next he ſays, " the folly of theſe men, and " the abſurdity is appearing more and more every day; and " ſtill thoſe men continue to act, as if no alteration in the " public opinion had taken place; they hear each other's " nonſenſe, and ſuppoſe the whole nation talks the ſame " gibberiſh; let ſuch men cry up the houſe of Orange or the " houſe of Brunſwick, if they pleaſe." Now, would it not have been decent in this author to have ſtated to you what the pretenſions of theſe Houſes were? Gentlemen of the jury, look at that part of the pamphlet that recommends the convention. " I wiſh, ſays the author, that *Mr. Grey* " ſince he has embarked in the buſineſs, would take the " whole of it into conſideration. He would ſee that the " only motion he could conſiſtently make, would be, that " Parliament ſhould *recommend* a convention." I know I live in a country, that aſſerts, by an act of Parliament, that the King, Lords, and Commons, conſtitute the Government of the country. Why, Gentlemen, will it not require a

great deal of diſcuſſion to determine, whether, in the way that gentleman ſtates, it is not High Treaſon.

Gentlemen, I am not ſtating this, to preſs againſt this Defendant. God forbid! but I mean to juſtify, at leaſt, the propriety of oppoſing thoſe who adopt this ſpecies of conduct. It reſts with you, Gentlemen, to determine, whether you will allow works of this kind to be circulated. Obſerve how artfully he requeſts a very reſpectable Gentleman, a Member of the Houſe of Commons, I mean Mr. Grey; and he puts his name in *italics* too. I ſtate it before you, and the public, that this is a high crime in this country: The work is now before you, in which the conſtitution of the country is calumniated; and not only the offices, but all the magiſtrates of the country. Now, Gentlemen, with reſpect to the propriety of the proſecution, as againſt the preſent Defendant, I have ſaid elſewhere, that in my opinion, it may be more proper that the publiſher of the work ſhould be proſecuted than the author, on this plain principle, that the man, who mixes the poiſon, and does not diſtribute it, is leſs guilty than he who lends his hand to the diſtribution of it.

Gentlemen, the licentiouſneſs of the preſs needs to be reſtrained; for when the author of the Second Part of the Rights of Man was proſecuted, the bookſellers thought it proper and ſafe to re-publiſh it, and that it was ſufficient to leave out ſome offenſive parts, marked in the information; and ſubſtituting others, equally offenſive in the room of them; and to ſay, that let the nature of the work, be what it will, the ſmallneſs of the gain, is to be an excuſe for

its publication, becauſe, if a man, knowing the actual miſchief reſulting from the publication of theſe books, chooſes, for two-pence, to run the riſk of publiſhing a work, the purport of which is to make wives and children deteſted of huſbands and fathers; and is he not to be brought to juſtice, becauſe he happens to have a wife and children. I know what you would have ſaid to the officer of the crown, if he had negligently permitted the continuance of ſuch publications,

I know you would have ſaid, that if a gullotine was to be found in this country, his head ought to be the firſt that ſhould be ſevered. Gentlemen, the Defendant publiſhed this book, which, by its title, imported either a decent of indecent account of the conduct of the firſt magiſtrate or the country; the title of the very ſame book ſtaring him in the face, and telling him it was written by Mr. Paine, who was at the ſame time under a proſecution, for a libel on the Government of this kingdom.

Gentlemen, you muſt perceive that if this can be the courſe, the King is eaſily done; and though a magiſtrate of this city, who I am ſure would ſay, I acted very baſely by him, if I ventured to flatter him. He being to execute his duty as a Magiſtrate, what does he do? He is informed, that the Defendant vended theſe ſeditious publications. This information came by an anonymous hand, I grant; and what does he do; why, he ſent for the Defendant, and told him, he muſt not publiſh the work in queſtion; but he, the Defendant, neglecting this admonition, about a fortnight after-

wards this perſon, the witneſs in the cauſe, purchaſed the book; for you never can have a conviction without buying a book. He uſed ſome art; — why, certainly, ſome art is generally employed in theſe caſes.

Gentlemen, have you a doubt that this Defendant had been perſuaded, by ſomebody or other, to diſpoſe of his ſtock after this admonition of the Lord Mayor. Gentlemen of the jury, God Almighty forbid, that I ſhould preſs this matter againſt the Defendant farther than ſound juſtice and equity ſhould require; I know the conſtitution of this country, and all that is dear to all of us depends on the firmneſs, integrity, and honeſty, with which Juries will decide on the nature of the conduct of perſons charged with offences.

Gentlemen, with regard to myſelf, I have only to ſay, that I know I want pardon for my own errors and inaccuracies, as well in this as in all my public tranſactions; and if, when you conſider the benign principle of the laws of England, which have been ſo villified in this publication; if you feel it is your duty to acquit the Defendant, you will diſcharge that duty; on the other hand, you will recollect that theſe principles tend to the deprivation of yourſelves, and your families, of both liberty and property;

SUMMING

SUMMING UP.

LORD KENYON,

GENTLEMEN OF THE JURY.

THIS cauſe has conſumed a conſiderable portion of your time, and I ſhall keep my word with you when I tell you, I will not add many minutes to that time. I have ſeveral weighty reaſons for ſo doing. In the firſt place, this is not the only buſineſs of this day, it is the laſt day in which Juſtice can be adminiſtered by me in this place, and thoſe civil cauſes of your fellow Citizens that are not heard to day, muſt ſtand over to a future period.

There is another weightier rerſon than this, that this proſecution which depends upon a few ſhort facts, does not appear to me to want a great deal of detail of argument or a great deal of artificial reaſoning either to ſubſtantiate the guilt, or to ſubſtantiate the innocence of the party before you. The cauſe is either plain to be decided upon very ſhort topics, or I confeſs, I know nothing of the cauſe.

If I were maſter of eloquence I would not make the deciſion of this cauſe a ſtage upon which I would diſplay that eloquence. Thoſe things which are very proper for advocates to do, become very improper for the Judge, who has nothing to do, but to ſtate to the Jury the ſhort grounds upon which the cauſe ought to proceed.

I ſhall not travel into the affairs of France and America, or any of the various topics that have, at conſiderable length, undoubtedly not improperly, been talked about this day, but I ſhall

I ſhall make one or two obſervations not exactly to the point of this cauſe.

I dare ſay it was not intended, but it did rather appear that the chief Magiſtrate of this City was a little ſneered at for what he has done.

He was called to the office by the unanimous voices of the Citizens, the ſituation he holds is the firſt Officer of the firſt City in the World in point of commerce and riches, and every thing that can conſtitute the magnificence of a City. He is not a Judicial Officer it is ſaid. — He is a Judicial Officer and a Municipal Officer too, and from theſe combined characters there are duties incumbent upon him, which by all the ties that can bind a man to the diſcharge of duty, he is bound to diſcharge. It ſtands at the head of his duties, next after protecting the religion which binds us to God, to govern that civil policy which binds Government together, and prevents us from being in a ſtate of anarchy and confuſion. What could he do other than he has done? He would have retired from his ſtation, if intelligence being given him he had not uſed all due diligence to ſee whether crimes had been committed, and to be acceſſary as far as he could to the ſupport of Government, and the detection of thoſe crimes, and putting them in the way of proſecution, and of being brought finally where this perſon is brought, before a Jury.

Therefore, I would ſtate that, making no farther remarks upon it, becauſe every man living who has adverted to his ſituation, has long ago not only acquitted him, but approved of his conduct.

Something

Something has been ſaid too reſpecting the nature of this proſecution, that it ought not to have been commenced, becauſe this man had been guilty of the offence in common with thouſands of his fellow Countrymen. — Are all the thouſand to be proſecuted, or is iniquity to go unpuniſhed?

I have heard that it was the perfection of the adminiſtration of criminal Juſtice to take care that the puniſhment ſhould come to few, and the example to many, and ſurely there is no blame to be imputed to the executive Government, when the offence was ſo diſſeminated, that a few, or that one only, for we treat of only one to day. — that the puniſhment being inflicted upon one perſon, the example might come to many.

Gentlemen, the book is before you, if you think it neceſſary to look through the whole, before you give your verdict that you will certainly do, becauſe upon the whole contents of the book your judgment upon criminality or innocence is to be formed. If the parts which have been extracted from it have been unfairly garbled, and taking the whole context together, that does not belong to them which the information ſtates, take the context, and if the context compels you to acquit the Defendant, you muſt acquit him.

That it was purchaſed from the perſon who is now the Defendant in this cauſe has been proved and is not controverted. But you are aſked, and very properly aſked, not to convict him unleſs he had an intention to offend.—To enter into the hearts of men belongs to him who can explore the the human heart, it belongs to human Judicatures to judge

of

of the intention by the overt act of the perſon, and therefore if in all caſes poſitive proof muſt be brought of evil intention, it would be proclaiming impunity for all offences where the intention goes to conſtitute the offence, which is almoſt all criminal caſes whatever. It may occur to a man that Death is a conſummation devoutly to be wiſhed for, and he may think it a laudable act to put an end to the lives of as many people as he can, becauſe it is that conſummation; and if a man indicted for murder were to tell you by his advocate, that this act was done from the pureſt intentions in the world to take the object out of the miſeries of this world, and you were called upon not to convict unleſs you had poſitive evidence of the badneſs of the intention, I know not how crimes are to be puniſhed.

In this caſe and in all others, we muſt refer to the act the party has done and aſcribe that to the intention of doing good, of doing evil, or of doing neither good nor evil, to which of thoſe motives it ought to be aſcribed. You will, under the ſolemn obligation you have been ſo often reminded of, anſwer that queſtion and want no advice from me.

The cauſe is all in your power, and in a power which does not take its riſe from the act of Parliament, but which aroſe from principles interwoven with our Conſtitution, which Juries before have exerciſed beyond all doubt.

If you think the Defendant is guilty of publiſhing that which trenches upon the Government of the Country, he will then be liable to puniſhment, on the other hand, if the man is innocent, he has a right to be acquitted by your Verdict.

AFTER

T

THE JURY WITHDREW TWO HOURS and TWENTY MINUTES, AND RETURNED A VERDICT,

GUILTY OF PUBLISHING.

LORD KENYON. The Verdict ſhould be *Guilty, or Not Guilty.*

JURYMAN. We have conſidered the caſe, my Lord, maturely, and this is the only verdict we can give.

LORD KENYON. I have no right to aſk what are your doubts, Gentlemen. If you have no doubts to ſtate to me, I can have nothing to ſay to you voluntarily.

JURYMAN. We have canvaſſed the point as well as we could: we can find no other Verdict.

LORD KENYON. I do not know the meaning of the words *Guilty of Publiſhing.*—I don't know in what that Guilt conſiſts You are bound to try the iſſue, you are ſworn to try it. — The Country will expect a Verdict from you.

The Jury withdrew again, and in about forty minutes returned with a Verdict of

GUILTY OF PUBLISHING THAT BOOK.

LORD KENYON. Gentlemen, you ſhould give ſome Verdict —but if you perſiſt, I muſt record it as it is.

JURYMAN. We have very maturely conſidered the caſe, my Lord, ſince we went out of Court; we cannot give any other Verdict'

The Verdict was then recorded,

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